

House File 356 - Introduced

HOUSE FILE 356

BY OLSON

A BILL FOR

1 An Act relating to the expungement of convictions of state
2 criminal offenses for alcohol consumption in public, public
3 intoxication, simulated public intoxication, open container,
4 or similar local ordinance offenses.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 123.46, subsection 6, Code 2017, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 6. Upon the expiration of two years following conviction for
5 a violation of this section or of a similar local ordinance, a
6 person may petition the court to expunge the conviction, and if
7 the person has had no other criminal convictions, other than
8 local traffic violations or simple misdemeanor violations of
9 chapter 321 during the two-year period, the conviction shall
10 be expunged as a matter of law. The court shall enter an order
11 that the record of the conviction be expunged by the clerk
12 of the district court. Notwithstanding section 692.2, after
13 receipt of notice from the clerk of the district court that a
14 record of conviction has been expunged for a violation of this
15 section, the record of conviction shall be removed from the
16 criminal history data files maintained by the department of
17 public safety. An expunged conviction shall not be considered
18 a prior offense for purposes of enhancement unless the new
19 violation occurred prior to entry of the order of expungement.

20 Sec. 2. Section 321.284, Code 2017, is amended by adding the
21 following new subsection:

22 NEW SUBSECTION. 3. Upon the expiration of two years
23 following conviction for a violation of this section or of a
24 similar local ordinance, a person may petition the court to
25 expunge the conviction, and if the person has had no other
26 criminal convictions, other than local traffic violations
27 or simple misdemeanor violations of chapter 321 during the
28 two-year period, the conviction shall be expunged as a matter
29 of law. The court shall enter an order that the record of the
30 conviction be expunged by the clerk of the district court.
31 Notwithstanding section 692.2, after receipt of notice from
32 the clerk of the district court that a record of conviction
33 has been expunged for a violation of this section, the record
34 of conviction shall be removed from the criminal history data
35 files maintained by the department of public safety. An

1 expunged conviction shall not be considered a prior offense for
2 purposes of enhancement unless the new violation occurred prior
3 to entry of the order of expungement.

4 Sec. 3. Section 321.284A, Code 2017, is amended by adding
5 the following new subsection:

6 NEW SUBSECTION. 6. Upon the expiration of two years
7 following conviction for a violation of this section or of a
8 similar local ordinance, a person may petition the court to
9 expunge the conviction, and if the person has had no other
10 criminal convictions, other than local traffic violations
11 or simple misdemeanor violations of chapter 321 during the
12 two-year period, the conviction shall be expunged as a matter
13 of law. The court shall enter an order that the record of the
14 conviction be expunged by the clerk of the district court.
15 Notwithstanding section 692.2, after receipt of notice from
16 the clerk of the district court that a record of conviction
17 has been expunged for a violation of this section, the record
18 of conviction shall be removed from the criminal history data
19 files maintained by the department of public safety. An
20 expunged conviction shall not be considered a prior offense for
21 purposes of enhancement unless the new violation occurred prior
22 to entry of the order of expungement.

23 EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill relates to the expungement of state criminal
27 offenses for alcohol consumption in public, public
28 intoxication, simulated public intoxication, open container, or
29 similar local ordinance offenses.

30 The expungement process under the bill provides that upon
31 the expiration of two years following conviction for alcohol
32 consumption in public, public intoxication, simulated public
33 intoxication, open container by a driver, or open container
34 by a passenger, or a similar local ordinance, a person may
35 petition the court to expunge the conviction if the person

1 has no other criminal convictions, other than local traffic
2 violations or simple misdemeanor violations of Code chapter
3 321 during the two-year period, and the conviction shall be
4 expunged as a matter of law. The bill further provides that
5 after receipt of notice from the clerk of the district court
6 that a record of conviction for consumption of alcohol in
7 public, public intoxication, simulated public intoxication,
8 open container by a driver, or open container by a passenger,
9 or similar local ordinance, the record of conviction shall be
10 removed from the criminal history data files maintained by the
11 department of public safety if such a record was maintained in
12 the criminal history data files. The bill also provides that
13 an expunged conviction shall not be considered a prior offense
14 for purposes of enhancement unless the new violation occurred
15 prior to entry of the order of expungement.

16 The current expungement process for a conviction for alcohol
17 consumption in public, public intoxication, or simulated public
18 intoxication, or for a local ordinance is very similar to the
19 new process in the bill, except that in order for a local
20 ordinance to be expunged under the current expungement process,
21 the local ordinance must arise out of the same transaction
22 or occurrence. In addition, the current expungement process
23 does not allow an expunged conviction to be considered a prior
24 offense for purposes of enhancement unless the new violation
25 occurred prior to entry of the order of expungement.

26 An expungement process currently does not exist for open
27 container by a driver in violation of Code section 321.284 or
28 open container by a passenger in violation of Code section
29 321.284A.